Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Telecommunications Act of 1996:	)	CC Docket No. 96-152
	)	
	)	
Telemessaging, Electronic Publishing and Alarm Monitoring Services	)	

COMMENTS
OF THE
UNITED STATES TELEPHONE ASSOCIATION

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SUMMARY

The Commission must be careful not to upset the careful balance crafted by Congress to proscribe anticompetitive conduct and to promote fair and efficient competition by adding to the restrictions imposed by Congress or by embellishing upon the safeguards contained in the Act. In most cases, the nondiscrimination requirements are plain on their face and need no additional regulation. Therefore, the Commission should refrain from imposing any regulations which exceed the statutory requirements.

Regarding Section 274 of the Act, USTA recommends that the Commission clarify the definition of gateway in Section 274(h)(2)(C) and electronic publishing joint venture in Section 274(I)(8). USTA explains that the Commission need not add to the list of transactional requirements in Section 274(b). Likewise, the Commission should not extend any prohibitions intended to apply only to affiliates to joint ventures in Section 274(c)(2)(C).

The language of Section 275 is clear and specific and no additional regulations are required to implement that section.

The requirements contained in Section 260 are sufficient to prohibit improper cross subsidy and unreasonable discrimination. Any additional regulation will impose unnecessary and costly burdens, particularly on small and mid-sized exchange carriers who have not been subject to some of the excessive regulatory requirements in the past.

Finally, there is no need to modify the legal and evidentiary standards currently applicable to the filing of formal complaints at the Commission.

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The United States Telephone Association (USTA) respectfully submits its comments in the above-referenced proceeding. USTA is the principal trade association of the incumbent exchange carrier industry. Its members provide over 95 percent of the incumbent exchange carrier-provided access lines in the U.S. Unlike their competitors, USTA's member companies would be subject to the non-accounting separate affiliate and nondiscrimination safeguards proposed by the Commission, in addition to those established by Congress in the Telecommunications Act of 1996.

I. INTRODUCTION.

In its Notice of Proposed Rulemaking (NPRM) released July 18, 1996, the Commission notes that the intent of Congress in enacting the Telecommunications Act of 1996 (1996 Act), was to establish a pro-competitive, de-regulatory national policy framework. The 1996 Act

permits the BOCs to enter the electronic publishing and telemessaging markets upon enactment and, in the future, the alarm monitoring market. Congress crafted a careful balance which proscribes anticompetitive conduct and promotes fair and efficient competition. The Commission must be careful not to upset that balance by adding to the restrictions imposed by Congress or by embellishing upon the safeguards contained in the Act. In most cases, the nondiscrimination requirements are plain on their face and need no additional regulation. In fact, Congress specifically included a sunset provision in Section 274(g)(2) to ensure that regulation of BOC- provided electronic publishing would cease four years after enactment. And, the Commission itself recognizes that in competitive markets, regulation is not necessary. Therefore, the Commission should refrain from imposing any regulations which exceed the statutory requirements.

II. THE SCOPE OF THE COMMISSION'S AUTHORITY IS LIMITED BY THE CLEAR LANGUAGE OF THE 1996 ACT.

The Commission must refrain from exceeding its authority and imposing regulation where none is anticipated by the 1996 Act. For example, Section 260(a) requires no new regulations. NPRM at ¶ 20. However, Section 260(b) requires the Commission to establish the necessary internal procedures which will permit it to expedite any complaints and establishes deadlines within which the Commission must act on any complaints received. Likewise, neither Sections 274 nor 275 require the Commission to impose any additional requirements on the BOCs. These sections of the Act are self-executing and do not require the Commission to institute rulemaking proceedings or implement new regulations. Again, the only action required by the Act is directed toward the Commission to establish expedited complaint procedures in

Section 275(c).

III. DETAILED RULES ARE NOT REQUIRED TO IMPLEMENT SECTION 274 OF THE 1996 ACT.

As explained above, the provisions of Section 274 of the 1996 Act are largely self-executing and the Commission need not create detailed rules to meet the statutory requirements. In those instances where clarification is necessary, the Commission must limit itself to further the intent of Congress to create a de-regulatory framework.

In Section 274(h), Congress defines electronic publishing and lists specific services which are excluded from that definition. The Commission requests comment on how any enhanced service should be classified. NPRM at ¶ 31. Section 274(h)(2)(C) excludes gateway services from the definition of electronic publishing. The Commission should clarify that a gateway includes a home page that electronically links selected Internet sites or other home pages. Such electronic linkages may be accessed by clicking on a word or a logo. In addition, a gateway includes introductory information regarding an Internet service provider's services or other information provider services such as electronic publishing services. Finally, software browsers should be considered navigational systems which are also excluded from the definition of electronic publishing pursuant to Section 274(h)(2)(C).

The Commission also requests comment on its interpretation of the definition of electronic publishing joint ventures as defined in Section 274(I)(5). NPRM at ¶ 34. As stated in Section 274(I)(8), joint ventures do not require equity interests, but can exist through revenue sharing or through royalty agreements. However, the use of the word "own" in Section 274(I)(8)

is limited to electronic publishing activities as defined in Section 274. The Commission should acknowledge that an interest in royalties does not equate to ownership with regard to any other provision of the Act or to any regulations which the Commission implements to initiate the Act.

As the Commission correctly points out, Section 274(b) does not apply equally to separated affiliates and electronic publishing joint ventures. NPRM at ¶ 35. Congress specified the differentiation between the two. There is no need for the Commission to supplement the list of nine structural separation and transactional requirements for separated affiliates and/or electronic publishing joint ventures. The list is comprehensive and complete. The Act does not provide any basis for the Commission to add to the list of requirements.

The Commission requests comment on whether Section 274(b)(5)(B) should be interpreted to prohibit a BOC and its separate affiliate from jointly using or leasing property. NPRM at ¶¶ 41, 42. A BOC and its separate affiliate should be permitted to share the use of property owned by one entity or the other and to jointly lease property, so long as the transaction is conducted at arm's length. There is nothing in the Act which would indicate otherwise. The Commission must continue to recognize the economies of integration derived from sharing which it has allowed in the past even under its Computer II structural separation requirements.

Further, Section 274(b)(7)(B) should not be interpreted to prohibit a BOC from providing services and incidental equipment to its separated affiliate. NPRM at ¶ 45. Again, the Commission allowed this type of activity even under the strict structural separation requirements of Computer II. Section 274(b)(3) requires that all such transactions be in writing and available for public inspection. Thus, there are ample safeguards to ensure that such transactions are conducted at arm's length.

The Commission should not unnecessarily restrict BOC research and development activities by prohibiting the BOCs from performing any research or development which may potentially be of use to a separated affiliate. NPRM at ¶ 46. Such an interpretation is far beyond the intent of the statute at Section 274(b)(7)(C) which clearly prohibits such activities performed exclusively for the affiliate. Independent research and development, even if of potential use to an affiliate, and sharing general findings with an affiliate are not prohibited by the statute. Further, there are no restrictions on the research and development activities between a BOC and an electronic publishing joint venture.

Likewise, Section 274(c)(2)(C) specifically permits a BOC to engage in promotional, marketing, sales and advertising activities on behalf of the electronic publishing joint venture. Therefore, the Commission should not extend any such prohibitions intended to apply only to separate affiliates to joint ventures. NPRM at ¶¶ 49-51.

In fact, while a BOC may not perform promotion, marketing, sales or advertising for or in conjunction with a separated affiliate as specified in Section 274(c)(1)(A), nothing in the Act prevents the separate affiliate from performing these activities (e.g., the selling of a BOC's tariffed service). In addition, nothing in the Act prevents a BOC's affiliate from performing these activities as an agent for either or both the BOC or the separated affiiliate. Finally, the Commission should conclude that the general provision of Section 274(c)(1) is subject in all respects to the express grants of joint marketing authority conferred by Section 274(c)(2).

The Commission seeks comment on whether the current Computer III and Open Network Architecture requirements are consistent with the nondiscrimination provision in Section 274(d). NPRM at ¶ 65. The language of the Act is clear and specific. There is no need for further

requirements on small and mid-sized carriers. The Commission should not exceed its authority by imposing unnecessary regulation.

VI. ENFORCING THE REQUIREMENTS OF SECTIONS 260, 274 AND 275 DOES NOT REQUIRE ADDITIONAL REGULATIONS.

There is no need to modify the legal and evidentiary standards currently applicable to the filing of formal complaints at the Commission. NPRM at ¶ 79. Current requirements are sufficient to ensure a full and fair resolution of complaints filed under Sections 260 and 275 within the 120 day statutory limit. The burden of proof should be on the complainant to provide sufficient basis to proceed on a complaint. The Act does not contemplate that the burden should shift to the defendant carrier. The Commission should not entertain frivolous complaints which only serve to waste the resources of the Commission and the defendant carrier. Therefore, USTA agrees that complainants must show material financial harm as is required in Sections 260 and 275 in their initial filing. NPRM at ¶ 83. Any complaint failing to do so should be dismissed.

VII. CONCLUSION.

In achieving the clear purposes of the Telecommunications Act of 1996, the Commission must refrain from adding to the restrictions mandated in the Act or embellishing upon the safeguards contained in the Act. There is no need for regulation which exceeds the statutory requirements.

Respectfully submitted,

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